

Pending before the Court is Plaintiff's Second Motion for Summary Judgment (Doc. No. 21). The parties agree that Defendant Cobalt Construction Services, LLC ("Cobalt Construction") is liable to Plaintiff for breach of contract in the amount of \$163,259.81. Thus, Plaintiff's Motion for Summary Judgment against Cobalt Construction on its breach of contract claim is **GRANTED** and judgment is hereby **ENTERED** against Cobalt Construction Services, LLC in that amount.

Plaintiff also seeks summary judgment on its breach of contract claim against Defendants Cobalt Property Services, LLC (“Cobalt Property”) and Cobalt Capital Companies (“Cobalt Capital”). Neither party is a signatory to the contract between Plaintiff and Cobalt Construction. Plaintiff has not directed this Court to any evidence demonstrating that Cobalt Property or Cobalt Capital was contractually bound to Plaintiff, nor that Cobalt Property or Cobalt Capital was engaged in any fraudulent misrepresentation that would have led to Plaintiff’s detrimental

reliance. Thus, Plaintiff's motion for summary judgment against Defendants Cobalt Property and Cobalt Capital is **DENIED**.

Finally, Plaintiff appears to seek summary judgment against all three Defendants on an action to recover on a sworn account. However, the law in Texas prevents recovery on a sworn account when there is an express contract containing all material terms. *Patton v. Archer*, 590 F.2d 1319, 1324 (5th Cir. 1979). Here, the contract between Plaintiff and Cobalt Construction was written and contained all material terms. Thus, Plaintiff's motion for summary judgment on its sworn account cause of action is **DENIED**.

In sum, Plaintiff's Motion for Summary Judgment on its breach of contract claim against Defendant Cobalt Construction is **GRANTED**. The motion for summary judgment on all other grounds is **DENIED**. **JUDGMENT** is entered against Cobalt Construction in the amount of \$163,259.81.

**IT IS SO ORDERED.**

**SIGNED** this 16th day of May, 2007.

A handwritten signature in dark ink, appearing to read "Keith P. Ellison", is written over a horizontal line.

KEITH P. ELLISON  
UNITED STATES DISTRICT JUDGE

TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES THIS ORDER SHALL  
FORWARD A COPY OF IT TO EVERY OTHER PARTY AND AFFECTED NON-PARTY  
EVEN THOUGH THEY MAY HAVE BEEN SENT ONE BY THE COURT